Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-1065

JOHN NUVEEN & CO., INC., A CORPORATION, INVESTORS SYNDICATE OF AMERICA, INC., A CORPORATION, AND INVESTORS DIVERSIFIED SERVICES, INC., A CORPORATION,

Petitioners,

vs.

HENRY T. SANDERS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTIONS TO MOTION OF SECURITIES INDUSTRY ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

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Of Counsel.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6555

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Respondent by his attorneys, objects to the motion of the Securities Industry Association ("SIA") for leave to file a brief as *amicus curiae* in support of the petition for Writ of Certiorari. In support of his objections respondent states as follows.

SIA makes no showing, as required by Rule 42(3), that petitioner will not make an adequate presentation of the facts and law to be reviewed. SIA does, however, seek to have this Court consider issues that are not present in the case.

SIA in its motion contends that it and its members have a substantial interest in the granting of the petition because, "The decision below has the effect of making dealers in short term notes virtual guarantors of payment of such notes." Motion, 2. In the decision below an underwriter of dishonored commercial paper was held liable for failing to make the examination of the issuer of securities required under the federal securities acts. The record, which the Petitioners have not placed before this Court, fully reveals the deficiencies in the examination of the issuer made by the underwriter.

The decision below does not, as SIA contends, affect "dealers in short-term notes." Moreover, the decision below does not make anyone a guarantor. The decision below determined liability for failure of an underwriter to fulfill statutory duties.

SIA further contends that the decision below enlarges the statutory obligations and liabilities of underwriters of securities by undermining "the right of an underwriter to rely upon experts and specifically, to rely upon financial statements certified by independent public accountants." The fact is that the underwriter found liable below never verified that an audit had been performed. The underwriter didn't know the auditor, never met or spoke with the auditor and did not glance at the auditor's work papers, which would have revealed than an audit had not been performed. Standard underwriting procedure calls for face-to-face meetings with the auditor. The Court below imposed liability for the underwriter's failure to fulfill these rudimentary requirements. In light of these facts it cannot be said that the decision below requires an underwriter to "audit the auditors".

The standards of 'reasonable investigation' to which the Court below held the underwriter have been acknowledged and applied with uniformity by all Courts having occasion to rule on them. Since all parties acknowledged below that the role of John Nuveen & Co., Inc. in connection with the sale of

the commercial paper involved was that of an underwriter, the issue resolved below was whether or not the underwriter made the reasonable investigation of the issuer mandated by the federal securities acts.

The would-be *amici* seek to use this case to argue issues that to them apparently are important. Those issues, however, are not found in the decision and the record below. For these reasons the motion of SIA for leave to file its *amicus curiae* brief should be denied.

Respectfully submitted,

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